Appendix
Summary of Federal Circuits' Eleventh Amendment Jurisprudence

The following table illustrates the consistency among the federal circuits in applying *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30 (1994). The first column identifies those factors relied upon by the Court in *Hess* to evaluate whether an entity is an arm of the state. The remaining columns identify how the federal circuits have characterized those same factors.

Hess[1]	1st Cir.	2nd Cir.	3rd Cir.	4th Cir.	5th Cir.	6th Cir.	7th Cir.	8th Cir.	9th Cir.	10th Cir.	11th Cir.
State control	Control	Appt. of governing members[2] Veto	Autonomy	Autonomy	Autonomy	Autonomy[3] - *Sue* - *Property* - *Tax*	Control	Autonomy - *Control* - *Status*		Autonomy - *Control* - *Status*	Control
State characterization	Status	Status	Status - *function included in analysis*	Treatment	Status	Status			Status		Status
Function	Function	Function		Concerns	Concerns	Concerns	Agent[4]		Function		
Liability	Liability	Liability Source of Funding	Liability	Liability	Funding	Liability	Liability	Liability	Liability	Liability[5] - *Ind. Fin.* - *Bond/Tax*	Liability - *Funding*
Other					Sue[6] Property				Sue Property		

[1] In *Hess*, the Court looked at several "indicators of immunity" in evaluating whether the state had structured an entity as an arm of the state. These indicators included: (1) the extent of state control, including the appointment of board members and the state's power to veto board actions or increase the entity's responsibilities; (2) how the enabling legislation characterized the entity and how the state courts have viewed the entity; (3) whether the entity's functions could be classified as governmental; and (4) whether the state bore liability for the entity's debts. 513 U.S. at 44-51.

[2] The Second Circuit considers two factors – how the governing members of the entity are appointed and whether the state has veto power over the entity's actions ("Veto") – to determine the extent of state control maintained over the entity.

[3] Relevant to the Sixth Circuit's analysis of the autonomy factor are whether an entity can sue or be sued in its own name ("Sue"), hold property in its own name ("Property"), and whether it is immune from state taxation ("Tax"). *See Alkire v. Irving*, 330 F.3d 802, 813 (6th Cir. 2003).

[4] What the Seventh Circuit refers to as acting as an agent of the state ("Agent") is essentially a determination of an entity's role or function. *See Thiel v. State Bar of Wisconsin*, 94 F.3d 399 (7th Cir. 1996).

[5] To determine whether a state is liable for judgments against an entity, the Tenth Circuit evaluates the extent of the entity's independent financing ("Ind. Fin") and its ability to provide its own financing through issuing bonds and levying taxes ("Bond/Tax"). *See Duke v. Grady Mun. Sch.*, 127 F.3d 972 (10th Cir. 1997).

[6] Rather than subsuming the "Sue" and "Property" factors under the "Control" factor as the Sixth Circuit does, the Fifth and Ninth Circuits weigh them as independent factors. *Perez v. Region 20 Educ. Serv. Ctr.*, 307 F.3d 318 (5th Cir. 2002); *Eason v. Clark County Sch. Dist.*, 303 F.3d 1137 (9th Cir. 2002).